



NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
ONE STATE STREET
NEW YORK, NEW YORK 10004

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In the Matter of :
INDUSTRIAL AND COMMERCIAL BANK OF CHINA LTD., and :
INDUSTRIAL AND COMMERCIAL BANK OF CHINA LTD., :
NEW YORK BRANCH :
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CONSENT ORDER

The New York State Department of Financial Services (the “Department” or “DFS”) and Industrial and Commercial Bank of China Ltd. (“ICBC”), including its New York Branch (the “New York Branch”) (together, the “Bank”) are willing to resolve the matters described herein without further proceedings.

WHEREAS, ICBC is a global financial institution with more than ten million corporate customers and approximately 720 million individual customers that has branched out its operations to 49 countries and has approximately \$5.7 trillion in assets as of December 31, 2022;

WHEREAS, ICBC operates a foreign branch in the State of New York that had approximately \$22.2 billion in assets as of March 31, 2023, and which cleared transactions worth more than \$5 trillion in U.S. dollars in 2022;

WHEREAS, the New York Branch experienced multiple compliance deficiencies for several years in a row and engaged in specific instances of misconduct and mishandling of confidential supervisory information; and

WHEREAS, the Bank has cooperated with the Department's investigation and is fully committed to maintaining an effective and sustainable compliance program at the New York Branch.

NOW THEREFORE, in connection with an agreement to resolve this matter without further proceedings, the Department finds as follows:

THE DEPARTMENT'S FINDINGS

Introduction

1. ICBC is a state-owned, publicly traded commercial bank incorporated in the People's Republic of China. ICBC has operated the New York Branch since 2008.
2. The New York Branch is licensed by the Department and is subject to supervisory examinations by the Department and the Federal Reserve Bank of New York (the "FRBNY").
3. After an investigation that included a review of documents, the taking of interviews and sworn testimony, and factual presentations by the Bank, the Department determined that the Bank permitted deficiencies in the New York Branch's Bank Secrecy Act/Anti-Money Laundering ("BSA/AML") and Office of Foreign Assets Control ("OFAC") sanctions screening compliance programs to persist over several examination cycles. The Department also identified other issues including the improper backdating of books and records in 2015 and the disclosure of confidential supervisory information.

Events at Issue

Long-Standing Weaknesses in BSA/AML and OFAC Screening Compliance

4. As a foreign bank branch operating in New York, the New York Branch is subject to periodic supervisory examinations. Those examinations are typically conducted jointly by the Department and the FRBNY or in alternating turns separately by each agency. Among many other things, such examinations review a bank's risk management, BSA/AML compliance program, transaction monitoring, and OFAC sanctions screening program.

5. On March 12, 2018, the Board of Governors of the Federal Reserve System (the "FRB") entered a Cease and Desist Order (the "C&D Order") with ICBC and the New York Branch to address significant deficiencies in the New York Branch's compliance with BSA/AML requirements and OFAC regulations. The C&D Order directed the New York Branch to implement actions to remediate the deficiencies identified in areas including corporate governance and management oversight, customer due diligence, and suspicious activity monitoring and reporting.

6. Following the C&D Order, the deficiencies cited in the New York Branch's BSA/AML and OFAC compliance programs persisted for several more years and through repeated examination cycles.

7. In 2022, the Department and the FRBNY conducted a joint examination that included a targeted review of the New York Branch's BSA/AML and OFAC compliance programs. The examination found that although the New York Branch's OFAC compliance program was adequate, its BSA/AML compliance program continued to have deficiencies and required additional enhancements.

8. The FRBNY conducted a targeted BSA/AML and OFAC examination in 2023 that found that both programs were in compliance, but additional improvements were still necessary.

9. The Department's most recent examination, also conducted in 2023, acknowledged the New York Branch's significant efforts toward enhancing its BSA/AML and OFAC compliance programs and successfully remediating all prior examination findings in those areas. The examination found that the New York Branch's BSA/AML and OFAC compliance programs were adequate due to significant improvements over the past several years.

Document Backdating and Reporting Failure

10. Foreign banking corporations licensed by the Department, such as the Bank, are required to maintain accurate books, accounts, and records. New York Banking Law § 200-c.

11. Further, Section 300.1(a) of Title 3 of the New York Codes, Rules and Regulations requires the Bank to "submit a report to the superintendent immediately upon the discovery of . . . embezzlement, misapplication, larceny, forgery, fraud, dishonesty, making of false entries and omission of true entries, or other misconduct, whether or not a criminal offense, in which any director, trustee, partner, officer, employee (excluding tellers), or agent of such organization is involved."

12. The Department received information from a New York Branch employee concerning actions taken by a senior employee of the New York Branch to satisfy an internal Know Your Customer ("KYC") program policy.

13. This policy required the New York Branch to periodically obtain documents from banking clients relating to those banks' own KYC programs, including a USA PATRIOT Act certification (the "Certification") by which the banking client would certify that it complied with the act. Upon receipt, this Certification was to be acknowledged and counter-signed by a member

of the New York Branch's staff — typically, the banking client's relationship manager. The signature requirement was part of the New York Branch's internal policy and was not a statutory or regulatory requirement.

14. In August 2015, the senior New York Branch employee learned that certain banking clients' Certifications had not been counter-signed by a member of the New York Branch's staff — in other words, although valid Certifications had been obtained from the clients, copies of the Certifications counter-signed by a New York Branch staff member were missing from those clients' KYC files. By that time, however, the individual who had been the relationship manager for the clients at the times the signed Certifications were due (all in 2014) had left the New York Branch.

15. Faced with the unsigned Certifications, the senior employee contacted the former employee multiple times in August 2015, and asked the former employee to counter-sign the Certifications as relationship manager at the New York Branch, a position the former employee no longer held. The senior employee also provided various dates in 2014 that the former employee should use when signing the Certifications — all dates when the former employee was still a relationship manager at the New York Branch. The former employee obliged, signing, backdating, and returning to the Bank signed copies of the Certifications for five different banking clients. Although the Bank asserts that the backdated Certifications ultimately were not included in the banking clients' KYC files, the conduct by the senior employee constituted a violation of the New York Branch's obligation to maintain appropriate books and records pursuant to New York Banking Law § 200-c.

16. Through its investigation, the Department learned that an employee had raised this issue internally to the Bank by no later than January 2017. Thereafter, the New York Branch

conducted an internal investigation that, in April 2017, confirmed that the copies of the Certifications in question had been backdated and signed by a former employee. The making of the backdated Certifications plainly constituted false entries, the making of which should have been reported to the Superintendent immediately upon discovery. 3 NYCRR § 300.1. Instead, the Department only learned about the backdated certifications in January 2018.

Disclosure of Confidential Supervisory Information

17. Section 36(10) of the New York Banking Law provides that “[a]ll reports of examinations and investigations, correspondence and memoranda concerning or arising out of such examination and investigations, including any duly authenticated copy or copies thereof in the possession of any banking organization . . . , foreign banking corporation . . . , [or] any other person or entity subject to supervision [by the Department], shall be confidential communications” Such communications are typically referred to as confidential supervisory information (“CSI”).

18. A regulated entity, such as the New York Branch, “shall not disclose any [CSI] to any person without the prior written approval of the department and subject to any terms and conditions that are imposed by the department on any such disclosure.” 3 NYCRR § 7.2.

19. In September 2021, the Bank sought to transfer an employee from the New York Branch to an overseas ICBC affiliate (the “Overseas Affiliate”). The transfer required approval from a regulator where the Overseas Affiliate was located. As part of the approval process, that regulator sent the Overseas Affiliate a questionnaire that asked whether the employee or the New York Branch was the subject of any regulatory or disciplinary investigations.

20. In October 2021, the Overseas Affiliate forwarded the questionnaire to a senior staff member at the New York Branch. This senior staff member consulted with the transferring

employee, a senior member of the New York Branch’s compliance department, and New York Branch counsel.

21. New York Branch counsel sent an email to the senior staff member advising that responses about the ongoing investigations would constitute CSI and, therefore, the New York Branch’s regulators would need to approve disclosure of the CSI to the Overseas Affiliate’s regulator.

22. In early November 2021, Bank counsel approached the Department, the FRB, and the FRBNY and provided the background as well as proposed language to send to the Overseas Affiliate’s regulator in order to respond to that regulator’s request.

23. In November 2021, without proper authorization from the Department and the FRB, the Branch sent the original proposed language and additional documents containing CSI to the Overseas Affiliate, which, in turn, sent the language and documents to its local regulator.

24. New York Branch counsel learned of this CSI breach in early December 2021. Two weeks later, the New York Branch reported the unauthorized disclosure to the Department and the FRB.

Violations of Law and Regulations

25. The Bank failed to maintain an effective and compliant anti-money laundering program at the New York Branch, in violation of 3 NYCRR § 116.2.

26. The Bank failed to maintain appropriate books, accounts, and records at the New York Branch, in violation of New York Banking Law § 200-c.

27. The New York Branch failed to submit a report to the Superintendent immediately upon discovering the occurrence of “embezzlement, misapplication, larceny,

forgery, fraud, dishonesty, making of false entries and omission of true entries, or other misconduct,” in violation of 3 NYCRR § 300.1.

28. The New York Branch shared confidential supervisory information, in violation of New York Banking Law § 36(10) and 3 NYCRR § 7.2.

NOW THEREFORE, to resolve this matter without further proceedings, the Department and the Bank stipulate and agree to the following terms and conditions:

SETTLEMENT PROVISIONS

Monetary Penalty

29. No later than ten (10) days after the Effective Date (as defined below) of this Consent Order, the Bank shall pay a total civil monetary penalty pursuant to New York Banking Law §§ 39 and 44 to the Department in the amount of thirty million U.S. dollars and 00/100 Cents (\$30,000,000.00). The payment shall be in the form of a wire transfer in accordance with instructions provided by the Department.

30. The Bank shall not claim, assert, or apply for a tax deduction or tax credit with regard to any U.S. federal, state, or local tax, directly or indirectly, for any portion of the civil monetary penalty paid pursuant to this Consent Order.

31. The Bank shall neither seek nor accept, directly or indirectly, reimbursement or indemnification with respect to payment of the penalty amount, including but not limited to, payment made pursuant to any insurance policy.

32. The Department recognizes the New York Branch’s ongoing efforts to remediate the shortcomings identified in this Consent Order. Among other things, the New York Branch has made substantial improvements to its BSA/AML and OFAC programs. The New York

Branch also responded promptly to the unauthorized disclosure of CSI and took steps to prevent such disclosure from occurring again.

Remediation

Status Reports

33. BSA/AML Compliance Program: Within sixty (60) days of the execution of this Consent Order, the Bank shall submit a status report that is acceptable to the Department with updates on any changes to the New York Branch's BSA/AML compliance program that are planned and/or underway or have been implemented since the 2021 examination (hereinafter the "Status Report"). At a minimum, the Status Report shall include updates on the following:

- a. A system of internal controls reasonably designed to ensure compliance with BSA/AML requirements and relevant state laws and regulations;
- b. Controls reasonably designed to ensure compliance with all requirements relating to correspondent accounts for foreign financial institutions;
- c. A comprehensive BSA/AML risk assessment that identifies and considers all products and services of the New York Branch, customer types, geographic locations, and transaction volumes, as appropriate, in determining inherent and residual risks;
- d. Management of the New York Branch's BSA/AML compliance program by a qualified compliance officer, who is given full autonomy, independence, and responsibility for implementing and maintaining an effective BSA/AML compliance program that is commensurate with the New York Branch's size and risk profile, and is supported by adequate staffing levels and resources;
- e. Identification of management information systems used to achieve compliance with BSA/AML requirements and relevant state laws and regulations, and a timeline to review key systems to ensure they are configured to mitigate BSA/AML risks;
- f. Comprehensive and timely independent testing for the New York Branch's compliance with applicable BSA/AML requirements and relevant state laws and regulations; and
- g. Effective training for all appropriate New York Branch personnel and appropriate ICBC personnel that perform BSA/AML compliance-related functions for the

New York Branch in all aspects of BSA/AML requirements, relevant state laws and regulations, and relevant internal policies and procedures.

34. Corporate Governance and Management Oversight: Within sixty (60) days of the execution of this Consent Order, the Bank shall submit a Status Report acceptable to the Department on updates to the New York Branch's sustainable governance framework that, at a minimum, addresses, considers, and includes the following:

- a. Actions the board of directors has taken and will continue to take to maintain effective control over, and oversight of, New York Branch management's compliance with BSA/AML requirements and relevant state laws and regulations;
- b. Measures to improve the management information systems reporting regarding the New York Branch's compliance with BSA/AML requirements and state laws and regulations to senior management of ICBC and the New York Branch;
- c. Clearly defined roles, responsibilities, and accountability regarding compliance with BSA/AML requirements and state laws and regulations for ICBC's and the New York Branch's respective management, compliance personnel, and internal audit staff;
- d. Measures to ensure BSA/AML issues are appropriately tracked, escalated, and reviewed by the New York Branch's senior management;
- e. Measures to ensure that the person or groups at ICBC and the New York Branch charged with the responsibility of overseeing the New York Branch's compliance with BSA/AML requirements and relevant state laws and regulations possess appropriate subject matter expertise and are actively involved in carrying out such responsibilities;
- f. Adequate resources to ensure the New York Branch's compliance with this Order, BSA/AML requirements, and state laws and regulations; and
- g. An appropriate and effective reporting structure that permits the New York Branch's BSA/AML compliance officer to report information in a timely and complete manner to the Board of Directors or committee thereof.

35. Customer Due Diligence: Within sixty (60) days of the execution of this Consent Order, the Bank shall submit a Status Report acceptable to the Department on enhancements to

the New York Branch's customer due diligence program. At a minimum, the Status Report shall include updates on the following:

- a. Policies, procedures, and controls to ensure that the New York Branch collects, analyzes, and retains complete and accurate customer information for all account holders, including, but not limited to, affiliates;
- b. Policies, procedures, and controls to ensure that foreign correspondent accounts are accorded the appropriate due diligence and, where necessary, enhanced due diligence; and
- c. Periodic reviews and evaluations of customer and account information for the entire customer base to ensure that information is current, complete, and that the risk rating reflects the current information, and if applicable, documenting rationales for any revisions made to the customer risk rating.

36. Confidential Supervisory Information: Within sixty (60) days of the execution of this Consent Order, the Bank shall submit a Status Report acceptable to the Department on enhancements to the Bank's handling of CSI that, at a minimum, addresses, considers, and includes the following:

- a. Actions the board of directors has taken and will continue to take to maintain effective control over, and oversight of, New York Branch management's compliance with state and federal laws and regulations concerning CSI;
- b. A system of internal controls reasonably designed to ensure compliance with state and federal laws and regulations concerning CSI;
- c. Effective training for all appropriate New York Branch personnel and appropriate ICBC personnel in state and federal laws and regulations and internal policies and procedures regarding CSI; and
- d. The designation of a subject matter expert to handle employee inquiries and requests regarding the handling and disclosure of CSI.

Annual Reports

37. For a period of two (2) years following the execution of the Consent Order, the Bank shall submit annual reports to the Department that provide updates on any changes to the New York Branch's BSA/AML program and ICBC's governance structure and supervision

thereof, including any changes in management and senior personnel of the compliance functions at ICBC and the New York Branch.

Full and Complete Cooperation

38. The Bank commits and agrees that it will fully cooperate with the Department regarding all terms of this Consent Order.

Further Action by the Department

39. No further action will be taken by the Department against the Bank or its successors for the conduct set forth in this Consent Order, or in connection with the remediation set forth in this Consent Order, provided that the Bank fully complies with the terms of the Consent Order. Furthermore, no further action will be taken by the Department against the Bank for conduct in connection with the Department's investigation.

40. Notwithstanding any other provision in this Consent Order, however, the Department may undertake additional action against the Bank for transactions or conduct that were not disclosed in the written materials submitted to the Department in connection with this matter.

Waiver of Rights

41. The Bank submits to the authority of the Superintendent to effectuate this Consent Order.

42. The parties understand and agree that no provision of this Consent Order is subject to review in any court, tribunal, or agency outside of the Department.

Parties Bound by the Consent Order

43. This Consent Order is binding on the Department and the Bank, as well as any successors and assigns. This Consent Order does not bind any federal or other state agency or any law enforcement authority.

Breach of Consent Order

44. In the event that the Department believes the Bank to be in material breach of the Consent Order, the Department will provide written notice to the Bank, and the Bank must, within ten (10) days of receiving such notice, or on a later date if so determined in the Department's sole discretion, appear before the Department to demonstrate that no material breach has occurred or, to the extent pertinent, that the breach is not material or has been cured.

45. The Bank understands and agrees that its failure to make the required showing within the designated time period shall be presumptive evidence of the Bank's breach. Upon a finding that a breach of this Consent Order has occurred, the Department has all the remedies available to it under the New York Banking Law and any other applicable laws and may use any evidence available to the Department in any ensuing hearings, notices, or orders.

Notices

46. All notices or communications regarding this Consent Order shall be sent to:

For the Department:

Justin D. Parnes
Assistant Deputy Superintendent
Consumer Protection and Financial Enforcement
New York State Department of Financial Services
One State Street
New York, NY 10004

Daniel F. Schiano
Excelsior Fellow
Consumer Protection and Financial Enforcement
New York State Department of Financial Services
One State Street
New York, NY 10004

For the Bank:

Mr. Lin Liao
President
Industrial and Commercial Bank of China Ltd.
55 FuXingMenNei Avenue
Xicheng District
Beijing, Peoples Republic of China, 100140

Mr. Yaogang Chen
Acting General Manager
Industrial and Commercial Bank of China Ltd.
New York Branch
1185 Avenue of the Americas, 18th Floor
New York, New York 10036

Miscellaneous

47. This Consent Order and any dispute thereunder shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.

48. This Consent Order may not be altered, modified, or changed unless in writing and signed by the parties hereto.

49. This Consent Order constitutes the entire agreement between the Department and the Bank and supersedes any prior communication, understanding, or agreement, whether written or oral, concerning the subject matter of this Consent Order.

50. Each provision of this Consent Order shall remain effective and enforceable against the Bank, its successors, and assigns, until stayed, modified, suspended, or terminated by the Department.

51. In the event that one or more provisions contained in this Consent Order shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Consent Order.

52. No promise, assurance, representation, or understanding other than those contained in this Consent Order has been made to induce any party to agree to the provisions of this Consent Order.

53. Nothing in this Consent Order shall be construed to prevent any consumer or any other third party from pursuing any right or remedy at law.

54. This Consent Order may be executed in one or more counterparts and shall become effective when such counterparts have been signed by each of the parties hereto (the “Effective Date”).

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IN WITNESS WHEREOF, the parties have caused this Consent Order to be signed on the dates set forth below.

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

INDUSTRIAL AND COMMERCIAL BANK OF CHINA LTD.

By: /s/ Alison L. Passer
ALISON L. PASSER
Deputy Director of Enforcement for
Consumer Protection and Financial
Enforcement

By: /s/ Lin Liao
LIN LIAO
President

December 22, 2023

January 17, 2024

INDUSTRIAL AND COMMERCIAL BANK OF CHINA LTD., NEW YORK BRANCH

By: /s/ Christopher B. Mulvihill
CHRISTOPHER B. MULVIHILL
Deputy Superintendent for Consumer
Protection and Financial Enforcement

By: /s/ Yaogang Chen
YAOGANG CHEN
Acting General Manager

January 17, 2024

December 22, 2023

By: /s/ Kevin R. Puvalowski
KEVIN R. PUVALOWSKI
Acting Executive Deputy Superintendent for
Consumer Protection and Financial
Enforcement

January 17, 2024

THE FOREGOING IS HEREBY APPROVED. IT IS SO ORDERED.

/s/ Adrienne A. Harris
ADRIENNE A. HARRIS
Superintendent of Financial Services

January 17, 2024